

ROGER D. ARWINE
Claimant

VS.

SPANGLER PRINTERS
Respondent

AND

SELF INSURED
Insurance Carrier

ORDER

APPEARANCES

RECORD

ISSUES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and hearing arguments of the parties, the Appeals Board finds, for preliminary hearing purposes, as follows:

Timely notice is an issue specifically enumerated in K.S.A. 44-534a(a)(2) that grants the Appeals Board jurisdiction to review a preliminary hearing order.

Claimant alleges that he suffered a work-related injury to his low back by a series of accidents that occurred while employed by the respondent, from May 1, 1993 through April 6, 1994, his last day worked. The respondent was first notified that the claimant was making a claim for a work-related injury on April 8, 1994. Claimant's attorney sent a claim for compensation to the respondent in a letter dated April 7, 1994, which was received by the respondent on April 8, 1994. The claimant alleges that since the date of accident is a series from May 1, 1993 through April 6, 1994, that notice was given to the employer within ten (10) days as required by K.S.A. 44-520.

Respondent, on the other hand, argues that claimant testified he injured his back while at work pulling a trash box on March 25, 1994. No notice was given until April 8, 1994, and claimant has not presented any evidence to establish that there was just cause for not giving notice of the accident within ten (10) days.

In order for the claimant to receive compensation benefits, he has the burden of proving his right to such benefits by establishing the various conditions upon which his right depends. See K.S.A. 44-501(a). This has to be accomplished by persuading the trier of facts by a preponderance of the credible evidence based upon the record as a whole. See K.S.A. 44-508(g). In the instant case, the Administrative Law Judge found that the claimant had not notified the respondent of an alleged accidental injury within ten (10) days nor had established just cause for not notifying respondent within ten (10) days as required by K.S.A. 44-520. The Appeals Board affirms this finding as the claimant has not sustained his burden of proof in reference to the issue of timely notice. The evidence in the record is insufficient to establish that the claimant suffered a series of accidents between May 1, 1993 and April 6, 1994. Claimant testified that he hurt his back while working for the respondent on March 25, 1994. He testified that his back did not get worse between March 25, 1994 and April 6, 1994, his last day worked. Consequently, claimant needed to give notice of the March 25, 1994, accident within ten (10) days or show just cause why he did not give notice within the required ten (10) days. Notice was not given until April 8, 1994, which is more than the ten (10) day requirement. Accordingly, claimant's request for medical and temporary total disability benefits is denied.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Robert H. Foerschler, dated September 13, 1994, denying claimant medical and temporary total disability benefits, is affirmed and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of March, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert H. Harris, Kansas City, KS
Kip A. Kubin, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
George Gomez, Director